

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

---

In re:

PAUL E. OLSEN AND CHERYL R.  
OLSEN,

Case No. 10-39799-svk

Chapter 11

Debtors.

---

**NOTICE OF MOTION FOR APPOINTMENT OF CHAPTER 11 TRUSTEE**

---

Ag Services of Wisconsin, LLC, Olsen's Mill Acquisition Company, LLC and Philmar, LLC by and through their attorneys, Liebmann, Conway, Olejniczak & Jerry, S.C., have filed a motion with the Court for appointment of a Chapter 11 Trustee pursuant to § 1104(a) of the Bankruptcy Code.

**YOUR RIGHTS MAY BE AFFECTED. YOU SHOULD READ THESE PAPERS CAREFULLY AND DISCUSS THEM WITH YOUR ATTORNEY, IF YOU HAVE ONE, IN THIS BANKRUPTCY CASE. (IF YOU DO NOT HAVE AN ATTORNEY, YOU MAY WISH TO CONSULT ONE).**

If you do not want the Court to grant relief as set forth in the above said motion (a copy of which is attached), or if you want the Court to consider your views on the motion, then, **within fourteen (14) days of this notice**, you or your attorney must file with the Court a written request for a hearing, or, if the Court requires a written response, an answer, explaining your position at:

Clerk, U.S. Bankruptcy Court  
Eastern District of Wisconsin  
U.S. Courthouse, Room 126  
517 East Wisconsin Avenue  
Milwaukee, WI 53202

If you mail your request to the Court for filing, you must mail it early enough so the Court will receive it on or before the date stated above.

You must also mail a copy to the following:

Attorney Colleen M. Kelly  
Attorney Thomas M. Olejniczak  
Liebmann, Conway, Olejniczak & Jerry, S.C.  
P.O. Box 23200  
Green Bay, WI 54305-3200

and Attorney David W. Asbach  
Office of the US Trustee  
517 E. Wisconsin Avenue, Suite 430  
Milwaukee, WI 53202

and Joseph J. Wielebinski  
Deborah M. Perry  
Munsch, Hardt, Kopf & Harr, P.C.  
3800 Lincoln Plaza  
500 North Akard Street  
Dallas, TX 75201-6659

**You must attend the hearing to be held at 12:30 p.m. on March 9, 2011** before the Honorable Susan V. Kelley in Room 167, United States Bankruptcy Court for the Eastern District of Wisconsin, 517 East Wisconsin Avenue, Milwaukee, Wisconsin 53202

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

Dated this 21<sup>st</sup> day of January, 2011.

LIEBMANN, CONWAY, OLEJNICZAK, & JERRY, S.C.  
Attorneys for Ag Services of Wisconsin, LLC, Olsen's Mill  
Acquisition Company, LLC and Philmar, LLC

/s/ Colleen M. Kelly

By: \_\_\_\_\_  
Colleen M. Kelly (SBN:1066300)  
Thomas M. Olejniczak (SBN: 1015820)

**POST OFFICE ADDRESS:**

231 South Adams Street  
Green Bay, WI 54301  
P. O. Box 23200  
Green Bay, WI 54305-3200  
Phone: 920-437-0476  
Fax: 920-437-2868  
900984

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

---

In re:

PAUL E. OLSEN AND CHERYL R.  
OLSEN,

Case No. 10-39799-svk

Chapter 11

Debtors.

---

**MOTION FOR APPOINTMENT OF CHAPTER 11 TRUSTEE**

---

NOW COME Ag Services of Wisconsin, LLC (“Ag Services”), Olsen’s Mill Acquisition Company, LLC (“OMAC”) and Philmar, LLC (collectively referred to herein as “Creditors”), creditors of the above-captioned Debtors, and hereby move pursuant to § 1104(a) of the United States Bankruptcy Code and Rule 2007 of the Federal Rules of Bankruptcy Procedure for the appointment of a Chapter 11 Trustee in these proceedings. The Creditors join in and incorporate all allegations set forth in the Motion for Appointment of Trustee (“BNPP Motion”) filed by BNP Paribas (“BNPP”) by this reference, and in further support of the Motion, respectfully states as follows:

**JURISDICTION, VENUE AND PROCEDURAL BACKGROUND**

1. This Court has jurisdiction over this Motion, arising under 11 U.S.C. § 1104(a), pursuant to 28 U.S.C. §§ 1334 and 157. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

Drafted by:  
Colleen M. Kelly  
Thomas M. Olejniczak  
LIEBMANN, CONWAY, OLEJNICZAK & JERRY, S.C.  
231 South Adams St.  
Green, Bay, Wisconsin 54301  
Phone: 920-437-0476  
Fax: 920-437-2868  
Email: cmk@lcojlaw.com  
tmo@lcojlaw.com

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. On December 16, 2010, the Debtors filed a voluntary petition under Chapter 11 of the Bankruptcy Code.
4. The Debtors remain in possession of their assets and continue to operate their affairs as debtors-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

### **FACTUAL BACKGROUND**

5. Since the Petition Date, Attorney John Selsing has served Ag Services with the following actions on behalf of the Debtors, services for which he will presumably want to receive compensation<sup>1</sup>:

- On December 1, 2010, Attorney Selsing posted a 14 Day Notice Terminating Tenancy at the main office of Ag Services located at W2003 HWY 21, Berlin, Wisconsin 54923 (“Berlin Office”), which Olsen’s Mill Acquisition Company, LLC (“OMAC”) permits Ag Services to use. On December 15, 2010, Paul and David Olsen filed an action to evict Ag Services from the Berlin Office. True and correct copies of the Summons and Complaint and Notice are attached as **Exhibit A** (“Waushara County Action”).
- OMAC purchased the Berlin Office from the Receiver in the Circuit Court for Green Lake County, Case No. 2009-CV-25. This is evidenced by Schedule 1.6 to the Asset Purchase Agreement between OMAC and the Receiver, which specifically lists “Main Office C25 W2003 SR 21 Berlin” as part of the Real Estate that was conveyed and transferred to OMAC at closing of the sale of the Olsen’s Mill Inc. assets. True and correct copies of Schedule 1.6 of the Asset Purchase Agreement, as well as the Order Approving Sale from the Green Lake County Circuit Court are attached hereto as **Exhibit B**.
- Attorney Selsing dismissed the Waushara County Action for the Berlin Office on January 12, 2011, upon receipt of a correspondence from counsel for Ag Services dated December 23, 2010 requesting the same. The Dismissal Order cites the fact that the eviction action “was filed on the wrong property and in the

---

<sup>1</sup> It is unknown whether Attorney Selsing has received any compensation from the Debtors to date.

wrong county” as basis for dismissal. A true and correct copy of the Order is attached hereto as **Exhibit C**.

- On December 13, 2010, Attorney Selsing filed an eviction action in Portage County. Paul and David Olsen do not own the real property that is the subject of the action, but rather a grain bin that occupies the land (“Portage County Action”). OMAC’s ownership is evidenced by Schedule 1.6 of the Asset Purchase Agreement between OMAC and the Receiver which specifically lists “2417 Stockton Road.” A true and correct copy of the Summons and Complaint is attached hereto as **Exhibit D**.
- The eviction action was filed on the heels of the Steinhilber Firm’s filing of a replevin action in Portage County (Case No. 10-CV-685), which sought essentially the same relief.<sup>2</sup>
- Attorney Selsing represented to counsel for Ag Services that he plans to attend a hearing on January 25, 2011, before the Portage County Circuit Court, despite the fact that the Debtors still have not sought approval from the Bankruptcy Court for his employment.
- On January 14, 2011, Attorney Selsing posted a Five Day Notice to Pay Rent or Vacate (“Notice to Vacate”) at another one of Ag Services’ locations that it leases from Paul and David Olsen. This particular notice contained the incorrect amount of rent as well as the incorrect address. To date, Ag Services has paid all rent due and owing on the property to which Attorney Selsing presumably intended to refer in the Notice to Vacate. A true and correct copy of the Notice is attached hereto as **Exhibit E**.

6. A brief investigation of the facts would have revealed that Paul and David Olsen did not own the subject property of the Waushara County Action and that Ag Services has made all rent payments for use of the premises subject to the Notice to Vacate.

7. The undersigned counsel contacted Debtors’ counsel via e-mail on January 10, 2011 to discuss the bankruptcy case, determine whether Debtors’ counsel was aware of these actions taken after the Petition Date by another law firm, and most importantly, express concern that Attorney Selsing’s actions have interfered with the business operations of Ag Services.

---

<sup>2</sup> The Steinhilber Firm did not serve Ag Services with this action and the firm has since dismissed the case on account of the Bankruptcy Court sustaining objections to its Application for Employment.

8. To date, Debtors' counsel has not responded to this inquiry. Nor has Debtors' counsel filed an Application to Employ John Selsing as Special Counsel to set forth, among other things, his disinterestedness and the benefit his work would produce for the estate.

**RELIEF REQUESTED AND SUPPORTING AUTHORITY**

9. Section 1104(a)(1) describes "cause" as existing upon demonstration of "fraud, dishonesty, incompetence, or gross mismanagement." This list, however, is neither exhaustive nor exclusive, as a wide variety of conduct by a debtor or its management may constitute "cause" to appoint a Trustee. In re Bellevue Place Associates, 171 B.R. 615, 623 (Bankr. N.D. Ill. 1994).

10. Creditors assert that Debtors' failure to seek authority to employ Attorney Selsing in the professional capacity of Special Counsel for the estate pursuant to 11 U.S.C. § 327 and Federal Rule of Bankruptcy Procedure 2014, and the lack of response from Debtors' counsel regarding the same, constitutes cause for appointment of a Trustee.

11. The unauthorized actions of Attorney Selsing reflect a lack of deference to the rules and requirements of the Bankruptcy Code and call for appointment of a Chapter 11 Trustee to oversee the Debtors' estate and assets. In re Ngan Gung Rest., Inc., 195 B.R. 593 (Bankr. S.D.N.Y. 1996) (court has the power to appoint a trustee under its inherent powers when faced with conduct abusive of the judicial process).

12. The foregoing reasons, combined with the allegations set forth in the BNPP Motion, reveal that Debtors cannot be reasonably relied upon to cooperate with the requirements of the Bankruptcy Code or its creditors in good faith. Immediate appointment of a Trustee is in the best interest of creditors and the bankruptcy estate.

WHEREFORE, Ag Services, OMAC and Philmar respectfully join in BNPP's request that this Court enter an Order immediately appointing a Trustee, and granting such other and further relief as this Court deems just and equitable.

Dated: January 20, 2011

Respectfully Submitted,

LIEBMANN, CONWAY, OLEJNICZAK & JERRY, S.C.  
Attorneys for Olsen's Mill Acquisition Company, LLC  
Philmar, LLC and Ag Services of Wisconsin, LLC

/s/Colleen M. Kelly

Colleen M. Kelly

Thomas M. Olejniczak

231 South Adams St.

Green, Bay, Wisconsin 54301

Phone: 920-437-0476

Fax: 920-437-2868

Email: [cmk@lcojlaw.com](mailto:cmk@lcojlaw.com)

[tmo@lcojlaw.com](mailto:tmo@lcojlaw.com)

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

---

In re:

PAUL E. OLSEN AND CHERYL R.  
OLSEN,  
  
Debtors.

Case No. 10-39799-svk

Chapter 11

---

**CERTIFICATE OF SERVICE**

---

I, Sarah M. Leupold, certify that I caused a copy of the foregoing Amended Notice of Appearance to be served upon the following individuals by electronic filing through ECF on January 21, 2011:

- Carla O. Andres candres@gklaw.com, zraiche@gklaw.com;mrroufus@gklaw.com
- Melissa Blair msb@kravitlew.com, dmh@kravitlew.com;reception@kravitlew.com
- Colleen M. Kelly cmk@lcojlaw.com, sarahl@lcojlaw.com
- Maria S. Lazar lazarms@doj.state.wi.us, gurlholks@doj.state.wi.us
- John W. Menn jmenn@oshkoshlawyers.com, jschoessow@oshkoshlawyers.com
- Mark L. Metz mlm@levmetz.com
- Russell L. Munsch rmunsch@munsch.com
- Timothy F. Nixon tnixon@gklaw.com, zraiche@gklaw.com;mrroufus@gklaw.com
- Office of the U. S. Trustee ustpregion11.mi.ecf@usdoj.gov
- Erin A. West ewest@murphydesmond.com, sshank@murphydesmond.com
- Joseph J. Wielebinski jwielebinski@munsch.com

/s/ Sarah M. Leupold

---

Sarah M. Leupold

900984